

## **17.0 NONCONFORMITIES**

### **17.1 Purpose and Applicability**

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance (or any amendment subsequent thereto) that do not conform to this Ordinance. Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this section. Many nonconformities may continue, but the provisions of this section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this Ordinance.

### **17.2 Nonconforming Uses**

1. Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this section, but this section shall only apply to the extent said nonconformities fully and clearly meet the definition of “non-conforming use” in Chapter 2 of this ordinance.
2. Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use. Also, a nonconforming use may be re-established in case of damage to the structure in which it is located (to an extent of less than 60 percent of its assessed value) due to fire or other disaster event pursuant to the issuance of a permit by the Planning Director. This shall include, as well, the repair or reconstruction of any structure or on-site utility, parking or street infrastructure in support of said nonconforming use. If said structure was also nonconforming, the reconstruction shall meet the requirements of the applicable District. An application must be filed for such building permit no later than 60 days after the structure has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt. The building permit shall expire six months after it is issued unless prior thereto a substantial beginning of the reconstruction shall have occurred and thereafter diligently pursued.
3. A nonconforming non-residential use shall not be expanded, changed or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a nonconforming non-residential use can expand within the existing structure, it may do so as long as the Planning Director determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which said nonconforming use is located is prohibited. An existing nonconforming residential use may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific District.
4. Once a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
5. If a nonconforming use is abandoned for one hundred-eighty (180) days or more, the use shall not be allowed to re-establish. All new uses in said structure shall thereafter be conforming. If said use is located in a structure which is destroyed (i.e. received damage to an extent of more than 60 percent of its assessed value at the time of destruction), a use may

only be allowed to re-establish in accordance with the Code in effect in the area in which it is located. Assessed value shall be determined by using tax assessment records provided by the tax assessor's office for the year in which the structure was destroyed.

6. If a nonconforming manufactured home, located on the same lot as a principal structure, is occupied by the blood-relative of the owner-occupant of the principal structure, such manufactured home may be permitted, subject to 3.5.2 of this Code.

### 17.3 Nonconforming Principal Structures

1. A nonconforming structure containing a use permitted in the District in which it is located may continue only in accordance with the provisions of this Chapter.
2. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
3. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.
4. If a nonconforming structure is damaged to an extent greater than 60 percent of its assessed value for tax purposes, it may be rebuilt only after the issuance of a permit from the Planning Director. A building permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction. In the issuance of said permit, the Planning Director shall follow these standards:
  - a. If the structure can be rebuilt on the same lot and meet all district and building type requirements, it shall be.
  - b. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located or building type, then it shall be placed on the lot in as conforming a manner as possible.
  - c. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
  - d. The reconstruction of a nonconforming non-residential structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering in accordance with the provisions of this Chapter.
5. Should a nonconforming structure be moved for any distance on the lot upon which it is located, if possible, it shall be moved so as to make the structure conforming. Otherwise the structure, if moved shall be placed on the lot in as conforming a manner as possible.
6. A nonconforming manufactured home used as a principal residential structure may only be replaced in accordance with the design criteria found in including, but not limited to Section 6.12 Additional Requirements for Manufactured Homes.
7. A non-conforming manufactured home neighborhood may continue to place and replace manufactured homes on previously platted lots or previously approved spaces, as well as make any necessary improvements to the neighborhood infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the park.

#### 17.4 Nonconforming Accessory Uses and Structures

1. A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity.
2. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.

#### 17.5 Nonconforming Lots

1. Except as provided in 17.5.2 and 17.5.3 of this section, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the District in which it is located, provided that the use meets all applicable yard and setback requirements for the District in which the lot is located.
2. A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot (owned by the same person) on or after the effective date of these regulations in order to create a single lot. If said combination, however, results in the creation of a single lot that is more than 1 ½ times the minimum lot width or area required in the District, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
3. A nonconforming lot may be developed if, at the effective date of this ordinance or any subsequent date upon which the lot became nonconforming, the lot is located in (i) a subdivision in which the lot was located had received preliminary plat approval; or (ii) a subdivision in which the lot was located had received final plat approval.

#### 17.6 Nonconforming Signs

1. Except as herein provided, nonconforming signs that were otherwise lawful on the effective date of this ordinance may be continued.
2. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.
3. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this ordinance. Once a nonconforming sign is removed from the premises or otherwise taken down or moved, said sign may only be replaced with a sign which is in conformance with the terms of this ordinance.
4. Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign for a particular use in sound condition are permitted so long as the nonconformity is not in any means increased.

5. If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this section, a nonconforming sign shall be considered "destroyed" if it receives damage to an extent of more than 50 percent of the sign's value immediately prior to the sign having received said damage.
6. The message of a nonconforming multi-tenant identification sign may be changed so long as it does not create any new nonconformities.
7. If a nonconforming on-premise sign which advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that has for a period of at least 180 days not been operated, conducted or offered, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within 30 days after the 180 day period has expired.

Notwithstanding the above, if there is an expansion to the heated square footage of an existing business, or a change in use to an existing building (except multi-tenant buildings), and there were one or more on-premise nonconforming signs which advertised the former or current business or use, any new signs used, and all new sign faces for the new use or business must meet all sign requirements for the underlying planning area.

8. If a nonconforming sign remains blank for a continuous period of 180 days, that sign shall be deemed abandoned and shall, within 30 days after such abandonment, be altered to comply with this ordinance or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this ordinance, a sign shall be deemed "blank" if:
  - a. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
  - b. The advertising message it displays becomes illegible in whole or substantial part; or
  - c. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Building For Rent", "Building For Lease", "Building for Sale", etc. shall not be deemed to be an advertising message).
9. All non-conforming off-premise advertising signs and roof signs shall be removed within 5 ½ years of the date of the original adoption of the Sign provisions contained herein on December 7, 1992 except as provided in Section 17.6.10 below. All other non-conforming advertising signs, except for civic buildings, shall be removed within seven (7) years of the date of the original adoption of the Sign provisions contained herein on December 5, 1994.
10. North Carolina General Statute 136-131.1 requires that "just compensation" be paid upon removal of certain outdoor advertising signs adjacent to the highway on the national system of Interstate for which a valid permit has been issued. This subsection shall not require that any sign be removed if compensation must be paid upon removal of such sign due to any State or Federal law that mandates such form of "just compensation" upon removal. Should any such State or Federal requirement become inoperative or otherwise apply to apply to a given sign, then such a sign shall be subject to removal in accordance with Section 17.6.9.
11. Certain nonconforming signs may be brought into conformity with the Highway Commercial (H-C) general parcel ground-mounted sign provisions (maximum height of 6 feet, maximum square footage of 32 square feet) if the following conditions are met:

- a) The nonconforming sign must be an on-premises sign at the location of an on-going commercial concern holding a valid City of Belmont privilege license on January 1<sup>st</sup>, 2002.
  - b) The affected business must be located on a non-conforming residential parcel.
  - c) A maximum of one sign is permitted.
  - d) A commercial sign permit fee must be paid and a valid sign permit must be obtained.
  - e) The proposed sign shall conform to all other requirements of the sign ordinance except those noted herein.
  - f) A sign previously permitted under this provision may be replaced only if the affected business holds a valid City of Belmont business privilege license at the time the existing sign is destroyed or damaged beyond repair.
  - g) If the business ceases operation for a period of 90 consecutive days, the sign must be removed and may not be replaced.
12. In the event that a residential or commercial property is annexed by the City of Belmont, and this property contains one or more non-conforming signs under the terms of this ordinance, one of the following conditions shall apply:
- a) In the event of a voluntary annexation, the Belmont City Council may, at its discretion, direct that the non-conforming sign(s) be replaced with a conforming sign or signs within 180 days of the date of annexation, as a stipulation of the annexation request. The sign(s) shall be replaced at the owner's expense, and shall be subject to the permitting process, but the customary sign permit application fee shall be waived.
  - b) In the event of involuntary annexation, the affected property owner(s) shall be given a period of seven (7) years to replace any non-conforming signs located on the premises, from the effective date of the annexation. The City of Belmont shall notify the property owners(s) of this provision and deadline by certified letter with return receipt. The Belmont City Council may also, at its discretion, choose this option for voluntary annexations.

### 17.7 Nonconforming Landscaping, Screening, and Lighting

- 1. If there is a change of use or an expansion to the heated square footage of an existing business, the lot shall fully comply with all street yard landscaping, and screening requirements.
- 2. Expansions to the parking area or loading areas which increase the total area more than 40 percent shall be required to comply with all applicable parking and loading area landscaping and screening.
- 3. Outdoor light fixtures installed prior to the effective date of this Code are exempt from the provisions of this Chapter 12, provided, however, that no change in use, replacement, and structural alteration of outdoor light fixtures shall be made unless it thereafter conforms to the provisions of this Code.

### 17.8 Nonconforming Street Frontages

- 1. If there is a change of use or an expansion to the heated square footage, or to the parking area or loading areas which increase the total area more than 40 percent, of an existing non-residential or multi-family use, the lot shall fully comply with all street improvement

requirements of Chapter 8 along the fronting public streets including, but not limited to turning and storage lanes, sidewalks, bike lanes, and curb and gutter.

2. New developments shall be required to comply with all street improvement requirements of Chapter 8 along the fronting public streets including, but not limited to turning and storage lanes, access management, sidewalks, bike lanes, and curb and gutter.

### 17.9 Nonconforming Plans

Any site specific plan (including but not limited to master plans, preliminary plats, final plats, conditional district plans, special use permit plans) for the development of property and/or construction of a building which has received final approval by the applicable Town governmental body for development and/or construction, but does not conform to this Code, may be developed and/or constructed in accordance with the ordinance, rules, and regulations, including any conditions imposed by the governmental body, and the details of the site specific plan, pursuant to which such plan was approved. Any plan approved prior to the adoption of this Code, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this Code.

The owner of property which contains an approved site specific plan identified above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this Code in lieu of this ordinance, rules and regulations pursuant to which the plan was approved. An owner who wishes to make such election shall notify the Planning Director who shall approve plan and notify the property owners (if required) in writing of the additional approvals or modifications, if any, which may be necessary in order for the plan to conform to the Code. In making such finding, the Planning Director shall require additional approvals and/or modifications only if such are necessary in order to avoid a result which would not occur under the original approved plan or under a de novo review under this Code.

Any amendment or modification to an approved site specific plan identified above, which would have required approval by the City Council pursuant to the ordinance, rule or regulation by which the plan was approved originally, shall be reviewed and approved (or denied or conditioned) in accordance with the terms and provisions of this Code as if it were an amendment or modification to a plan originally approved under this Code.

Nothing herein is intended to prohibit the exercise of any vested right established by common law, ordinance or statute.

### 17.10 Nonconformities in a Watershed Area

Existing development as defined in this Code may be continued and maintained subject to the provisions provided herein. Expansions to structures or modifications to plans classified as existing development must meet the requirements of this Code however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

1. Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Gaston County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
  - a. Where the lot area is below the minimum specified in this ordinance the Watershed Administrator is authorized to issue a watershed protection permit.

- b. Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.
2. Occupied Lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.
3. Uses of Land. This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:
  - a. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
  - b. Such use of land shall be changed only to an allowed use.
  - c. When such use ceases for a period of at least six months, it shall not be re-established.
4. Reconstruction of Buildings or Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:
  - a. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - b. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

### 17.11 APPEALS AND MODIFICATIONS

The Planning Board shall hear and decide appeals from any land owner (i) to make a change in use of a nonconforming use to a less-intense nonconforming use; (ii) to make a change in location of a nonconforming use of land to another location on the same property; or (iii) allow the replacement of a nonconforming use.

The Planning Board may only grant a change in a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:

1. (i) Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and (ii) that the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and

2. That the decision to grant the change will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.

The Planning Board, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this ordinance and shall be punishable as prescribed by this Code.

The Planning Board, in granting a change in a nonconformity pursuant to this section may prescribe appropriate conditions and safeguards in conformity with this ordinance in order to conform with this section. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Code and shall be punishable as prescribed by this Code.

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